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The construction of allegedly abused children's narratives in Scottish criminal courts

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Abstract

This study investigated lawyers' use of social narratives surrounding child sexual abuse when questioning 66 5- to 17-year-old alleged victims in Scottish criminal courts using a mixed-methods approach. Thematic analysis found that the use of beliefs and stereotypes varied depending upon the lawyers' role (defense/prosecution), children's age, and the alleged victim-defendant relationship. These findings were investigated further using narrative analysis, which showed that, with increasing age and decreasing familiarity with defendants, narratives increasingly focused on the characteristics and actions of the victims rather than the defendants. Older children contributed more to narratives than younger children, but their contributions were only incorporated into the prosecutors' narratives. Defense lawyers adopted more victim-blaming tactics as the narratives developed. Findings suggest that the criminal justice system, practitioners, and researchers must do more to recognize and guard against the reinforcement of stereotypes that may influence public rhetoric and jury decision-making.

The construction of allegedly abused children's narratives in Scottish criminal courts

Child sexual abuse (CSA) involves sexualized contact between children and significantly older persons (Weatherred, 2015). Children's testimony is often the primary evidence (Jackson, Newall, & Backett-Milburn, 2015), as physical evidence is frequently unavailable (Burrows & Powell, 2014) and/or inconclusive (Cossins, Goodman-Delahunty, & O'Brien, 2009). However, previous studies suggest that children are seldom given the opportunity to provide their own narratives of events (Hanna, Davies, Crothers, & Henderson, 2012; Klemfuss, Cleveland, Quas, & Lyon, 2016), since lawyers primarily ask closed-ended questions (Andrews, Lamb, & Lyon, 2015) to construct interpretations of events that correspond with their clients' case (Plotnikoff & Woolfson, 2012). These interpretations, true or not, may be unintentionally endorsed by the children due to the authoritative status of the lawyers (Ochs & Capps, 2002), and children's propensity to acquiesce to suggestive and closed-ended questions (Andrews & Lamb, 2016).

CSA misconceptions are incorrect beliefs regarding sexual abuse, victims, and perpetrators (Cromer & Goldsmith, 2010). Mock jurors' pre-existing (incorrect) beliefs and stereotypes about sexual assault, which often have no bearing on criminal liability (Temkin, 2010), can influence verdicts more than the facts of the case (Goodman & Melinder, 2007), suggesting that the ways in which lawyers present their arguments affect case outcomes (Bottoms, Golding, Stevenson, Wiley, & Yozwiak, 2007). Thus, whilst lawyers cannot ask witnesses to draw inferences from the facts (Henderson, 2016), they can encourage juries to make inferences consistent with their predetermined views about such crimes by directing the narratives and exploiting common misconceptions. The current study investigated how children's narratives were differentially constructed by prosecutors and defense lawyers and how these strategies differed depending on particular case characteristics.

What do Jurors Believe about CSA?

Survey research conducted in the United States (Quas, Thompson, & Clarke-Stewart, 2005) and Scotland (XXXa, under review) found that jury-eligible lay-persons have limited and often incorrect knowledge of children's competencies and ability to testify (Antrobus et al., 2012; XXXb, under review). Quas et al. (2005) and XXXa (under review) found that laypeople generally believe, inaccurately, that children can easily be coerced into making false allegations of sexual assault, and that children who are sexually abused often show bizarre sexual behavior. Such prejudicial views about CSA might influence how juries assess complainants' evidence (Cossins, 2008). For example, juror misconceptions about adolescent sexual activity can affect beliefs about the extent to which adolescents may have consented to alleged sexual abuse, reducing defendant responsibility (Klettke & Mellor, 2012). Because many direct- and cross-examinations in CSA cases exploit victim and perpetrator stereotypes (O'Connor, 2008; Westcott & Page, 2002), and the majority of potential jurors hold factually incorrect beliefs (XXXa, under review; Cossins, 2008; Quas et al., 2005), it is important to investigate the prevalence of such misconceptions, and to examine whether particular misconceptions feature in examinations more frequently than others (McGee, O'Higgins, Garavan, & Conroy, 2011).

How do Lawyers Construct Children's Narratives in Court?

In adversarial jurisdictions, the defense lawyer's responsibility is to convince a jury and/or judge of the client's innocence, and prosecution lawyers aim to portray their witnesses as truthful and credible (Cederborg, 1999). To achieve this, lawyers question child witnesses in ways that maintain their control of the discourse (Westcott & Page, 2002) by limiting the extent to which witnesses can provide information while leading them to co-construct a convincing narrative (Henderson, 2002, 2016). Through the construction of lawyers'

narratives, jurors are encouraged to perceive events in the light of personal and societal conceptions (Howarth, 2006; Willig, 2008).

This reasoning is supported by social representations theory, which suggests that, when attempting to understand an unusual situation, individuals draw upon socially shared conventions that are previously 'known' via the process of anchoring (Moscovici, 1998). These narratives can be integrated into common discourse via the media, assuming the status of truth or common sense regardless of their accuracy (Marecek, Crawford, & Popp, 2004). The most credible accounts of abusive episodes are thus likely to be those that adhere to recognized or expected social vocabularies (Weiss, 2009). Similar processes are evident in the story model of juror decision-making, which holds that jurors impose a narrative using both trial evidence as well as their understanding of similar events (Pennington & Hastie, 1992).

Media reports focus on the most extreme cases of CSA (Weatherred, 2015), so any deviations from those unrepresentative portrayals (e.g., lack of medical evidence, lack of corroborating witnesses) could be used to advantage by defense lawyers suggesting to jurors that the deviations make the allegations being tried implausible. Social representations may further create stereotypes of 'ideal' victims and 'ideal' defendants (Lindholm & Cederborg, 2016). Any deviations from these ideals may be highlighted by lawyers seeking to suggest that the abuse may not have occurred (Peace, Shudra, Forrester, Kasper, Harder, & Porter, 2015).

Narrative Construction is Dependent on Case Characteristics

The narratives presented to jurors are likely to vary depending on the children's age (Ernberg, Tidefors, & Landström, 2016) as well as the relationship between the alleged victims and defendants. Research on age-related changes generally suggests that vulnerability to suggestive questions decreases as a function of age (Jack & Zajac, 2014; Redlich &

Goodman, 2003; Zajac & Hayne, 2006), so it is reasonable to theorize that lawyers may apply alternative techniques in order to challenge the credibility of older children and adolescents (Szojka, Andrews, Lamb, Stolzenberg & Lyon, 2017). Younger witnesses are often believed to lack the cognitive capacity to make-up untruthful sexual incidents (Antrobus et al., 2012) and they are unlikely to possess the characteristics that can diminish credibility in adult sexual assault cases, such as intoxication and previous sexual relationships (Bottoms et al., 2007). Older CSA victims are deemed more responsible for their assault than younger ones (Rogers, Lowe, & Reddington, 2016), with girls approaching puberty often perceived by jurors as near-adults, thus allowing misconceptions about rape to become salient in narratives about these older children (Cossins, 2008). As a result, alleged victims under 16 may be particularly vulnerable when questioned by defense lawyers, who may use stereotypes about the sexualized behavior of teenagers to communicate that the witnesses may have participated voluntarily.

Laypersons assume greater responsibility for sexual activity on the part of the victim as the age difference between the two parties decreases (Reitz-Krueger, Warner, Newsham, & Reppucci, 2016), and if the defendants are also children, the abuse is viewed as less severe (Giglio, Wolfteich, Gabrenya, & Sohn, 2011), while alleged acts of sexual abuse by father figures are seen as more harmful (Reynolds & Birkimer, 2002). Guilty verdicts may thus be more likely when the age and power gaps between the two parties are larger (McCoy & Gray, 2007). Thus, it can be hypothesized that more references to consent and victim responsibility should occur in defense lawyers' narratives when the defendants and complainants are of similar ages. Similarly, prosecutors might try to dispute these misconceptions or elicit more victim-led testimony (Stolzenberg & Lyon, 2014) because that is most likely to be persuasive (Davies, Bull, & Milne, 2016). It is less likely that gender will affect lawyers' narratives, because victims of CSA are predominately female (Finkelhor, 2009). Further, it is unlikely

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that abuse severity will have an influence on narratives, as a lower severity of abuse is associated with a lower rate of disclosure (Cederborg, Lamb & Laurell, 2007), and fewer charges filed (Walsh, Jones, Cross & Lippert, 2010).

The Construction of CSA Narratives in Scottish Criminal Courts

The Scottish criminal justice system is a unique context in which to investigate the ways in which lawyers construct narratives about children in sexual abuse cases. Scottish Law requires that all evidence be corroborated, and, as a result, children are required to testify more often and in a much wider range of cases than in the rest of the United Kingdom and other adversarial jurisdictions. Secondly, one feature of Scottish Law is precognition, whereby all witnesses must state their evidence before trial. Similar to discovery depositions in the USA (American Bar Association, 2017), this procedure means that advocates thus know in advance what evidence witnesses are likely to give, increasing the likelihood that their narratives will be more developed. There has been no prior systematic qualitative analysis of the way in which lawyers question children in Scotland because proceedings are not routinely transcribed and are kept confidential by the courts.

The Present Study

The current study was the first to examine lawyers' construction of alleged CSA narratives during witness testimony and to ask whether the constructions differed depending on the lawyer's role (prosecution/defense), and case characteristics (child age and alleged victim-defendant relationship). Transcripts of the direct- and cross-examinations of 66 5- to 17-year-old children alleging sexual abuse in Scottish criminal courts between 2009 and 2014 were analyzed using thematic and narrative analyses. We sought to first identify the themes and stereotypes communicated in the direct- and cross-examinations and determine whether these were contingent upon lawyer role, child age, and alleged victim-defendant relationship. This descriptive analysis of themes informed further qualitative analysis of 10 transcripts.

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Narrative analysis was used to decipher the extent to which themes were used differentially and in combination as a function of case characteristics.

Thematic and narrative analyses are exploratory and reflexive methodological techniques and thus hypotheses were appropriately broad. Informed by previous findings, we predicted that children's narratives would be differentially constructed by prosecutors and defense lawyers, and that the themes and narratives techniques used would further differ depending on child age and the alleged victim-defendant relationships. Specifically, it was predicted that the use of stereotypes would be commonplace, and center around victims more frequently than defendants (Huang, 2016), but that defense lawyers would engage stereotypes about CSA more frequently than would prosecutors. During cross-examination, it was expected that older children would be presented as more responsible than younger children, and that children over the age of thirteen, in particular, would be subjected to questions about consent. Furthermore, we predicted that children who were allegedly abused by relatives would be accused of lying rather than of bearing responsibility for the interaction more than children who were allegedly abused by non-relatives.

Because previous research has identified that lawyers often juxtapose topics during the examination of child witnesses (Brennan, 1995), we expected that lawyers would construct multiple narratives during the child's testimony. It was further predicted that older children would contribute to the prosecutor's narrative and the defense lawyer's narratives more than younger children because the former tend to provide longer answers (Andrews, Ahern, Stolzenberg, & Lyon, 2016).

Method

Sample

The Court Service Team of the Scottish Court Service identified all cases conducted in six major courthouses in Scotland between 2009 and 2014 in which alleged victims of

CSA had testified. The portions of the trials in which the children testified were then transcribed. Cases involving children who needed translators, retracted allegations, or had inaudible or missing audio were excluded. Each case was heard before a judge and a jury, with the jury deliberating on the verdict and the judge deciding on the sentence. Transcripts of 42 trials involving a total of 66 5- to 17-year-old alleged victims ($M = 13.44$, $SD = 2.74$) were used in the current study.

Most witnesses were female (73%). Children were categorized into three age groups: 12 years old and below ($n = 15$, $M = 9.40$, $SD = 2.13$), 13 to 15 years old ($n = 35$, $M = 14.06$, $SD = .79$) and 16 years and older ($n = 16$, $M = 16.29$, $SD = .47$). These categories accord with the Sexual Offences (Scotland) Act (2003); 16 years is the age of sexual consent, but a person aged 16 or over can claim to be innocent of the charge of committing sexual offences with a child aged between 13 and 16 years if that person ‘reasonably believed’ that the child was over the age of 16. These legal categories reflect differences in the attribution of sexual agency to children of different ages, which might also influence how likely lawyers and jurors are to question witnesses’ potential motives for misrepresenting the events. No information was available regarding the children’s ethnic or socioeconomic backgrounds.

All defendants were male, and 90% ($n = 60$) of the alleged victims knew them. In this study, defendants were categorized into three relationship groups: (1) father: biological, stepfather or mother’s boyfriend, (2) other relatives: uncle, grandfather, brother, cousin, or family friend [all family friends were presented as ‘uncle’ figures] and (3) non-relatives: acquaintances or strangers (Table 1). Most children (71%, $n = 47$) alleged multiple instances of abuse, including vaginal or anal penetration (62%, $n = 41$), oral penetration (11%, $n = 7$), touching under clothes (15%, $n = 10$), touching over clothes (5%, $n = 3$), and exposure (8%, $n = 5$). Fifty-one (77%) of the cases resulted in guilty verdicts and 15 (23%) in acquittals. Single complainants were involved in 48% ($n = 32$) of the cases, there were two

complainants in 43% ($n = 29$), three in 5% ($n = 3$), four in 2% ($n = 1$), and five in a further 2% ($n = 1$).

Coding

The transcripts contained direct- and often redirect-examinations, in which the prosecution questioned the children, and cross-examinations, in which the defense questioned the children. Prosecutors asked children an average of 307.77 ($SD = 235.20$, $n = 17\ 235$) questions; Defense lawyers asked children an average of 201.48 ($SD = 142.84$, $n = 11\ 283$) questions (Andrews & Lamb, 2016). For the purposes of this study, lawyers' questioning first underwent thematic analysis to identify specific questioning themes and determine how the presence or absence of the themes varied depending on lawyer role, children's age, and the alleged victim-defendant relationship. Narrative analysis was then conducted on a representative sample of 10 transcripts to examine how these themes were used to structure arguments to support or disparage children's allegations, and to investigate how narrative construction techniques might differ depending on lawyer role and case characteristics. To maintain the integrity of the coding procedure, we adhered to Gaskell and Bauer's (2000) criteria as quality indicators. These criteria aim to achieve confidence and relevance via triangulation, reflexivity, systematic sampling, transparency, thick description, and reporting unexpected findings. Communicative validation was deemed irrelevant because assurances of confidentiality prevented us from directly exploring the current findings with the child witnesses.

Thematic analysis

In accordance with thematic-analytical guidelines (Attride-Stirling, 2001; see also, Ahern, Sadler, Lamb, & Gariglietti, 2016), all transcripts were read multiple times; to ensure familiarity with the narratives, a log of initial notes was made, and thereafter themes were labeled to create an exhaustive list.

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A reflexive probationary coding session, involving the primary coder and two secondary coders, was conducted on half of the transcripts ($n = 33$) using the initial themes generated, resulting in a small number of changes and modifications to the coding frame. The final themes were defined with examples to produce a codebook of 40 themes (see Table 2). The presence of these themes was coded by an independent coder in a random selection of 20% of the transcripts. Inter-rater reliability was high for all codes ($K's > .75$). To maintain reflexivity and confidence in the themes generated, reliability assessments were performed throughout the duration of coding, and all disagreements were discussed. Themes were then cross-tabulated and interpreted by age and relationship category (Table 3).

Based on the prevalence of specific themes in each age group and relationship category, common characteristics of each cell were identified. Subsequently, a 'typical' case was selected from each cell of the age (3) x alleged victim-defendant relationship (3) cross-tabulation. One cell (16- to 17-year-olds x Father/Step-Father) was not represented in the data set. To achieve saturation (Gaskell & Bauer, 2000), two additional cases were selected because their unusual nature was expected to challenge the narratives lawyers might typically apply. Each case selected for narrative analysis was independent to avoid the possibility that some lawyers consistently relied on the same themes or narratives. Table 3 explains the selection of each of the transcripts/cases.

Transcripts were analyzed by the primary coder twice with the assistance of Atlas.ti. To ensure that analyses were systematic (Flick, 2014), we adopted the method outlined by Hauptert (1991). We began by chronologically identifying meaningful discussion points in the direct- and cross-examinations. These segments were then labeled. Next, the themes within each segment were identified and attached to quotations. From this, the core narrative was then identified, as well as the central statements illustrating it. To elucidate common patterns, narratives were then examined together and in relation to child age, lawyer role, and victim-

defendant relationship. To avoid under-analysis by examining quotations individually in specific regions of the text, coders focused on the section of text in which the theme appeared, rather than the individual quotation; more than one theme could be addressed in each part of the text.

In the majority of transcripts, children's responses were limited to one-word answers to closed-ended questions. Hence, children's responses could only be considered during narrative analyses when the children interrupted the lawyers, made sudden outbursts, or, more rarely, when lawyers and children engaged in joint narrative construction.

During this narrative analysis, the primary coder adopted and maintained the perspective of the jury (Cederborg, 1999) and remained blind to the outcomes of each case. Further, the narrative was approached as though each new piece of evidence was presented cumulatively. Once narratives were generated, they were reviewed holistically to avoid 'under-analysis through summary' (Antaki, Billig, Edwards, & Potter, 2003, p.1).

To increase and assure reliability and allow for thick description, a full data audit was conducted by the primary coder and a secondary coder to ensure that all possible interpretations of the data were explored (Gaskell & Bauer, 2000).

Results and Discussion

Thematic Analysis Overview

Table 4 shows the results of the thematic analysis. Consistent with our predictions, prosecution and defense employed different themes when questioning children, and the defense relied on the identified themes more extensively. Additionally, there were unvarying age and relationship category differences in the themes lawyers used, with children over the age of thirteen and those abused by non-relatives more likely to be questioned about their own role in initiating or sustaining the abuse, and younger children abused by fathers or stepfathers more likely to be accused of lying. Consistent with recent research (Huang, 2016),

victim-based beliefs, rather than perpetrator stereotypes, were identified as the primary themes that lawyers used to exploit juror misconceptions about CSA. To our surprise, the presence or absence of themes varied depending on the children's age at the time they testified, but not their age at the time the abuse occurred. This suggests that lawyers either failed to consider age at the time of the alleged crimes or consciously constructed their narratives in relation to the child's age at the time of trial.

Children's Age

Prosecution

References to 'Knowledge (Biological/Sexual)' and 'Innocence' both peaked in examinations of 5- to 12-year-olds. 'Pre-empting the defense' occurred most commonly in examinations of 16- to 17-year-olds, implying that prosecutors anticipated the defense's use of victim-blaming techniques, such as challenging the children about consent.

Defense

Discussion of the defendants' 'Influence' over the children's actions and behaviors occurred least in examinations of the 5- to 12- year-olds. This suggests that defense lawyers sought to ignore the 'Innocence' that was portrayed in the direct-examinations. To assume that the perpetrator had 'Influence' over the defendant would portray the victim as childlike, which would support the prosecution narrative. In one case, 'Consent (Explicit)' was discussed with a 12-year-old, which is particularly concerning because a child under the age of 13 cannot give consent (Sexual Offences Act, 2003). Lawyers questioned 13- to 15-year-olds the most about 'Forensic Naivety/Awareness', suggesting a trend towards victim-blaming as age increased. Defense lawyers discussed 'Personality', portraying defendants as "good guys", and used the 'Adult Behaviors' theme most when questioning 13- to 15-year-olds. 'Defense lawyers used 'Attraction' the most with 16- to 17-year-olds, suggesting that these children had contributed to the development of their alleged abusive episodes.

Alleged Victim-Defendant Relationship

Prosecution

There were no instances of 'Pre-empting the Defense' in the Father/Step-Father category, suggesting that prosecutors did not anticipate the use of misconceptions related to the dynamics of consent or responsibility. Perhaps this is because sexual abuse by parents is perceived by mock jurors as particularly traumatic (Bornstein, Kaplan, & Perry, 2007; McCoy & Gray, 2007; Stolzenberg & Lyon, 2014) and so prosecutors may see less need to pre-empt the defense narrative when the jury can be expected to sympathize with the children rather than question their intentions. The other relative's category contained the most instances of 'Pre-empting the Defense', suggesting that the prosecution feared that more misconceptions might be exploited in other-relative dyads. Non-Relatives were associated with the most 'Manipulation (Cyber)', suggesting a more extended and persistent grooming process.

Defense

Cases in the Father/ Step-Father category were least likely to be associated with use of the 'Delayed Disclosure (Family)/(Police)' theme, implying that defense lawyers expected that jurors were most likely to understand delayed reporting in this context. Cases in the Other Relatives category involved the most references to 'Coercion' suggesting that although the child was not lying off their own accord, they still bear some responsibility for the accusations against a vulnerable adult. Combining this with the increased references to 'Family Relations' suggests that the defendant is being presented as an 'easy target'. Sympathetic portrayals of the perpetrators were often combined with references to 'Delayed Disclosure (Family)/(Police)' themes.

Cases involving non-relatives were also most likely to involve victim-blaming themes such as 'Implicit Sexual Behavior' and 'Consent (Explicit)'. There was an additional increase

in references to the themes of ‘Attention/Sympathy’ and ‘Immaturity’, with the alleged victims simultaneously portrayed as both adults and children. Such presentations suggest that children who are abused by non-relatives have the behavior and physical appearance of adults but the emotional and cognitive characteristics of children, leaving them vulnerable (Rogers et al., 2016). Hence, defense lawyers can take advantage of the children's cognitive vulnerabilities when questioning them but persuade the jurors to perceive the victims as near-adults.

In sum, the results of the thematic analysis found that lawyers employed multiple themes when structuring narratives about the children, and that theme employment varied in relation to the children's age and victim-child relationship. Of particular note were increases in the attribution of responsibility and decreased discussion of perpetrator characteristics as children's age increased and relatedness to the perpetrator decreased. These results illustrate qualitative difference in the narratives employed by lawyers, showing that prosecutors and defense lawyers use representations that they expect jurors to believe and also try to pre-empt the line of questioning their opponents might employ.

Development and Use of Narratives

The narrative analysis subsequently examined the combinations of themes employed during direct- and cross-examination, as well as if their presence was used differently in accordance with case characteristics. Further, the primary arguments used were identified as well as the extent to which narrative techniques qualitatively differed depending on child age and alleged victim-defendant relationship. Both prosecution and defense lawyers primarily controlled the direction and structure of the narratives. Prosecutors’ narratives followed a chronological structure in which the children were allowed to make comments and describe elements of their experiences. Defense narratives aimed to portray children as manipulative, consenting, and/or lying. Lawyers used sub-themes to reinforce their central narratives. As

predicted, 'lying' narratives were most often applied to younger children and those abused by relatives. When abused by non-relatives, the youngest children were more likely to be portrayed as manipulative than older children, who were portrayed as more likely to have consented. However, these narratives were often used simultaneously with 13- to 15-year-olds, implying that these children were subject to particularly intense cross-examination techniques. Indeed, 13- to 15-year-olds were most likely to make sudden outbursts in apparent attempts to control the narratives.

Lawyer Role

Prosecutors

Prosecutors' direct-examinations formed narratives suggesting that children were competent and truthful victims. The accounts attempted to follow a coherent, chronological structure, with the development of abusive relationships attributed to the actions of the defendants (Klemfuss et al., 2016). Children could contribute to the narratives in response to open-ended questions asked by the prosecutors or by using language that the prosecutors incorporated to form joint narratives (Jackson et al., 2015). This has previously been shown to increase children's credibility (Ernberg et al., 2016).

P: And what did he do with his penis?

C: He touched it against me.

P: And what part of you did he put it against?

C: Um my fairy.

P: Your fairy?

C: Mhhmm

...

P: Now you told us there about S. R. putting his penis against your fairy?

C: Yeah.

By using the children's language in later questions, prosecutors enabled children to provide their own version of events. To make children appear victimized, some prosecutors reinforced the idea that the children were younger at the time of the abuse than at the time of trial, so that jury members could picture young innocent figures subject to abuse, rather than the older individuals testifying.

P: And of course, you're now 13, aren't you?

C: Aye.

P: And at the time you were giving the statement you were 11, weren't you?

C: Aye.

P: And you were talking about events prior to giving that statement, is that correct?

C: Hm.

P: When you were even younger than 11, yes?

C: Aye

...

P: And as a young girl what was it like, the thought of your family breaking up and you going into care?

Alternatively, prosecutors presented the children as victims by rejecting claims that the children consented to the alleged sexual activity. One prosecutor asked a child if she had wanted the activity to happen after each 'scene' in the direct examination, thereby reinforcing the argument that the incidents were non-consensual.

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P: And D. said are you really only 12?

C: Mhhmm.

P: And you said yes?

C: Yeah.

P: Had you been saying anything that night about being a different age?

C: Um no I don't think so.

Finally, when non-consensual sex occurred within previously consensual relationships, prosecutors attempted to emphasize the lack of consent at the time of the charged incidents, regardless of previous consensual encounters.

P: But on your account, you had woken up to Mr A. having sex with you, to which you had not consented. Is that right?

C: Yes.

Such emphasis is important, because jurors have been shown to have difficulty imagining non-consensual activity when consensual sex occurred previously (Burns, 2004). Highlighting the fact that other sex acts were consensual whereas the one in question was not helps jurors to distinguish between this act and previous sexual encounters. Some prosecutors took this further, combining the assertion of relevant facts with pre-emptive questioning to protect witnesses against the cross-examination strategies that might follow.

P: It might be suggested to you that you didn't tell anyone at the outset that you didn't want to have sex with B. S. because you had. What would you say to that?

C: That that's wrong.

P: That's wrong okay. And - and it might also be suggested that you said you hadn't wanted to have sex with him, so you could get an excuse to your parents so that you wouldn't get into trouble?

C: No.

Defense lawyers

Defense lawyers attempted to undermine children's evidence by portraying the children as lying, manipulative, and/or consenting.

Children as lying. Defense lawyers often took a direct approach when accusing children of telling lies. This can be especially traumatic for young people testifying in court (Hayes & Bunting, 2013). This technique invites children to contribute to the narratives while conforming to the defense version of events. Lawyers also used the sub-narrative of portraying children as naïve, whilst centrally suggesting that they were lying. The alleged incidents were portrayed as mistakes or jokes that had escalated to the court system.

D: You're telling lies because you are maintaining a story that you told to people in W. about having sexual relations with C. R., and that story has snowballed from then.

You went to the police, you went to the social worker -

C: (Shouting, angry) I'm the one that's telling the truth here!

D: - and ultimately you've ended up in court perhaps through no choice of your own, but that's as a result of your initial lies -

C: (Shouting, angry) I'm in court because he's lying! That's why I'm in court!

D: Did you want to bolster yourself up and that's why you told people you had sex with him?

C: (No response).

In this case, the child's alleged lying is attributed to her alleged immaturity and consequent attempt to 'bolster' herself, leading to rumors that are deemed untrue by the defense. As a result, different themes interact to create the overall 'lying' defense strategy.

Children as manipulative. This technique portrays defendants as innocent parties who were subject to the children's seductive powers or were unaware that they were committing offences. This was effectively achieved by creating sympathy for the defendants.

D: What I'm suggesting Miss G. is that perhaps you're more worried, you're more concerned about what your mother thinks of you than what happens to R.

C: No.

In this incident the child had contacted the defendant in violation of his bail conditions, and had then hidden this from her mother. The defendant was an individual with learning difficulties, and so the child was portrayed as having power within the relationship. Helping breach the bail conditions could be interpreted by jurors as a malicious act on the part of a child who also disobeyed authority figures, and so the lawyer sought to shift responsibility from the defendant to the alleged victim. Some defense lawyers expressed sympathies for the alleged perpetrator more openly, accusing children of deliberately and conveniently forgetting important details.

Finally, some lawyers employed this narrative by openly accusing children of being the manipulative guilty parties, engaging in sexual activities without the defendants' consent. The child's answer below illustrates how children's responses are not incorporated by the

defense into their narratives. Whilst the child's response may reduce the success of this narrative, the suggestion itself might perhaps seem plausible to jurors.

D: And one night in W. when he was so drunk he didn't know what he was doing, you gave him a hand job.

C: No that never happened. As I've told you multiple times, that did not happen.

This narrative provides defense lawyers with differing opportunities to ascribe responsibility to the victim. Sometimes, children were portrayed as manipulative, as having consented to some sexual acts that might reasonably appear to imply consent to more advanced acts, or as deliberately untruthful, in efforts to convey that the children shared some responsibility for the offences that followed.

Children as consenting. Previous research has suggested that, once it has been suggested that the alleged victims bore some responsibility, children's answers cease to affect subsequent decision-making (Westcott & Page, 2002), and so the lawyer's use of social narratives becomes even more influential. On occasion, lawyers introduced the idea that children had implicitly consented to sex by exploiting their lack of knowledge about relationships.

D: Uhhuh, but you must have had some idea as to what might be the agenda here? That there would be greater intimacy or continued intimacy?

C: I had no idea that he was going to try and take it further.

The theme of 'Implicit Sexual Behaviors' reinforced the idea that sexual intercourse was inevitable and thus that the child was not a faultless victim (Lindholm & Cederborg,

2016). Other defense lawyers adopted more explicit approaches to narrative construction by openly accusing children of consenting to sexual encounters. In the example below, the jury was shown a video of the alleged perpetrator having sexual intercourse with the teenager being cross-examined.

D: Did you ask him to come downstairs and act out a rape fantasy in his house?

C: Absolutely not.

The discussion of the rape fantasy stops here, suggesting that the defense lawyer's aim was not to get the child's acquiescence, but rather to introduce the possibility that the perpetrator was not fully responsible for the sexual encounter. This idea was reinforced by a later comment.

D: Why were you having sexual relations with a rapist?

The responsibility attributed to the child was made salient here to such an extent that this question could represent a form of 'secondary victimization' (Zydervelt, Zajac, Kaladelfos, & Westera, 2016). Furthermore, this question is impossible for the child to answer because it suggested that the child had either consented or was foolish enough to associate with this 'rapist', and so bore some responsibility for what happened.

Narratives Techniques That Differed Depending on the Children's Age

5- to 12-year-olds

The modal technique employed by prosecutors with the youngest children involved contrasting the children's sexual knowledge with their innocence and childlike characteristics. Juxtaposing the two themes emphasized the severity of the alleged abuse and

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highlighted that young children are more likely to have been abused if they possess sexual knowledge (Antrobus et al., 2012; Bottoms et al., 2007).

P: He got his middles and he put it in your mouth?

C: Yes.

P: Okay and did he say anything when he did that?

C: He was making grunt noises and -

P: Grunt noises?

C: Yes.

During cross-examination, the youngest children were most likely to be accused of lying. Skilled defense lawyers portrayed children as at best confused and, at worst, liars (Bowden, Henning, & Plater, 2014).

D: I'm just about to ask my last question. Are you sure that R. did naughty things to you?

C: Yeah.

D: You are. And that you're not just being told that R. did naughty things to you by someone else?

C: No that was just R.

In this example, coercion serves as a sub-narrative in which the blame is shifted from the defendant to the adults surrounding the child. Within the sub-narrative of coercion, children maintain their innocent persona, at the expense of their credibility. Since many potential jurors believe that children often make false allegations of abuse (McGee et al.,

2011), the lying-coercion narrative is a sensible social construction from which to build a defense argument. Additionally, attempting to convince jurors that nothing happened, rather than encouraging jurors to distinguish between legal and illegal acts, may be preferable when the children are so young (McGee et al., 2011). Thus some lawyers asked children to re-iterate statements made during the direct-examination before accusing them of lying.

D: No. C. your Granddad D. never um put his penis in your vagina on any occasion, did he?

C: Yeah

D: And the reason that we can't read about that and we don't read about that in any of the police statements is because it didn't happen?

C: Yeah

D: You're saying it did happen?

C: Yeah

D: Okay. And he didn't put his hands down your trousers and touch your vagina in May 2011?

C: (No Response)

D: I'm saying to you he didn't do that, did he?

C: Yeah he did.

13- to 15-year-olds

The narratives used when questioning 13- to 15-year-olds were more complex as these children might appear physically (though not psychologically) older than their chronological age (Rogers et al., 2016). In addition, according to Scottish law, lawyers can use consent as a line of enquiry with children over the age of 13 years, thus offering more victim-blaming

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narratives (Cossins, 2008) and ‘character assassination’ techniques (Davies, Henderson, & Seymour, 1997) with children of this age and older.

D: You were 12 years old the first time you had sex with C. R. according to you?

C: Yes, I was.

D: What were you thinking about having sex at 12 years old?

C: What?

D: What, did you think it was a good idea?

C: No, I knew it was against the law.

These questions suggest that defense lawyers used narratives of ‘Implicit Sexual Behavior’, and ‘Adult Behaviors’ to suggest a gradual progression into a consensual sexual relationship. The example implies that the child was an immature, troublesome, vixen who was responsible for the alleged sexual encounter (Peace et al., 2015; Rogers et al., 2016). The ‘Lolita’ portrayal of the victim was subsequently emphasized by the child’s secrecy.

By portraying 13- to 15-years-olds as immature for thinking that their relationships were based on love and trust whilst behaving like adults, suggests that the defendants engaged in consensual sexual activities with them. These techniques placed additional pressure on prosecutors seeking to portray the manipulative and persuasive behavior of the defendants to give these children the opportunity to restate their accusations before cross-examination.

P: You knew it was against the law?

C: (No response).

P: Did you say that to C. R.?

C: Yes.

P: What what did you say to him?

C: I just said that I think it was wrong and he would say yeah but we love each other.

....

P: So you told him it was wrong but he said but we love each other?

C: Yes.

This prosecutor highlighted the child's knowledge that the sexual activities were illegal, and the child contributed to the joint narrative by implying that the alleged perpetrator was aware of both her age and her concerns. These latter issues were further highlighted to the jury because several young females testified against this defendant, providing further evidence of his sexual perversion (Bottoms et al., 2007).

The cognitive immaturity and physical maturity of these children reduced the lawyers' ability to maintain control (Klemfuss et al., 2016). The children were prone to sudden frustrated outbursts, threatening the narrative control by breaking the pattern of questioning (Westcott & Page, 2002).

C: Just say that you were 12 years - just say that you were in my position -

D: I'm sorry. I'm not allowed to answer any questions.

J: Well I wonder if you would let the witness finish her answer. The idea is that we let them, let the evidence come out, yes? Yes, just finish your answer.

C: If you were a 12-year-old in my position and your mum found out that you were having sexual relationships with someone who was much older than you and it was against the law, would your mother not go to the police? Are you saying your mum would just let you get away with that?

D: I'm not here to answer your questions.

Outbursts could be interpreted as indications of secondary victimization which might increase juror sympathy. Alternatively, the outbursts might reinforce the defense stereotype that these young adolescents do not respect the authority of the court and are over-reacting because they are not telling the truth. Defense lawyers may prevent children from providing their own accounts of events and then disregarding 'outbursts' that challenge the cross-examination narratives. This illustrates the diverse challenges faced by these children in court, and the varying identities that can be attributed to them (Westcott & Page, 2002).

16- to 17-year-olds

Children in the oldest age group were beyond the age of consent, thus their examinations were more akin to those of adult sexual assault complainants (Cossins, 2009). Challenges to the children's characters were most common, with children accused of having consented. Victim-blaming was common, as children were expected to have the same knowledge and executive functioning as adults, and thus were frequently accused of being responsible for their actions (Rogers et al., 2016). As such, there was a specific focus on the 'Alert/Preventative Tactics' that the children did or did not employ during the abusive episode.

D: He pushed you back? Can you could you explain that a bit more to us? How how did he push you back?

C: He got his arm out and pushed me back.

D: Did it take much to push you back?

C: A wee bit.

D: A wee bit. Did you try to push him off?

C: Pointless.

This line of questioning shifts the focus from the violent actions of the alleged abuser to the witness' failure to prevent the attack (Wong & Balemba, 2016) and the defense lawyer may later suggest that the victim's limited resistance demonstrated her implicit consent. However, the victim in this case was 4-years-old at the time the attack occurred which provides more evidence that lawyers are exploiting public misconceptions to assert their case. Additionally, defense lawyers' narratives (consent and/or victim-blaming) often subjected victims to humiliation and, arguably, secondary victimization. These techniques were evident in their most extreme form with the 16- to 17-year-olds.

D: My Lord, I wish for us to have a look at certain parts of the legal production which is video three.

(Video of alleged abuse playing)

C: Can I have a break?

(No response from the court)

C: Can you stop that please?

(No response from the court)

The narrative above aimed to portray the child's consent and knowledge of the relationship's nature. Similarly, previous studies have shown that claims of virginity (also present during this cross-examination) are subjected to increased scrutiny when other features of the victim (such as drinking, wearing revealing clothing or having older friends) were not consistent with public perceptions of virgins (Burns, 2004). Because jurors' reactions to witnesses are major concerns when defense lawyers choose which narratives to employ

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(Henderson, 2002), lawyers must emphasize the accuracy of the narratives in order to create a cohesive defense (Klemfuss et al., 2016). Virginity does not fit the defense narrative (i.e., that the victim was a willing participant in somewhat extreme sex acts) and so is contested. Because the victim-blaming and humiliation was so extreme, re-examination allowed the prosecution to reassert their case.

P: You'll understand that he suggested none of these things happened at all. Do you understand that's what Mr M. said?

C: Yeah.

P: Did they happen?

C: Yeah.

P: Did they happen the way you told us before lunchtime?

C: Yeah.

P: Is that the truth?

C: Yeah.

The defense previously suggested that the child fabricated claims of abuse because her mother and grandfather (the accused) had argued. During re-examination, the child assured the jury she understood the defense narrative and denied it. Disputing defense claims during re-examination also occurred when consent was suggested.

P: On your account you had woken up to Mr A. having sex with you to which you had not consented. Is that right?

C: Yes.

This question not only reiterated that the child could distinguish between consensual and non-consensual acts but also re-directed the jury to the relevant charges, such that the victim characteristics became less relevant. Hence, 16- to 17-year-olds were re-examined using a singular narrative to reduce the impact of the defense portrayal.

Narrative Techniques That Differed Depending on the Child-Perpetrator Relationship

Fathers

Defense narratives commonly accused children of being coached or of fabricating their abuse to help their mothers in custody battles.

D: And so, your dad denies that these things happened.

C: Well he's just lying.

D: And have you exaggerated in any way the things you say happened to you?

C: I know what happened.

D: Okay.

C: Because why would I remember all this time?

D: Do you feel that perhaps the things that you're saying now are are perhaps not correct?

C: They are correct.

D: Right okay. Now the last thing I want to ask you about is you and K. Have you and K discussed any of this together?

Here, themes of 'Lies', 'Coercion', 'Memory', and 'Immaturity' were combined to create a complex thematic interaction. The child appeared to be competent, not responding to questions by passively saying 'yeah'. This may have led the defense lawyer to introduce more themes in an attempt to confuse the child. In the last question, for example, the lawyer

attempts to shift the focus from ‘lies’ to suggest that the child was competent enough to have invented these accusations with her brother.

Prosecutors attempted to demonstrate the emotional as well as physical trauma that children experienced. Below, attention is drawn to the power that the defendant had over the victim (Ahern et al., 2016) as well as the victim’s innocence and fear of the alleged perpetrator.

P: Did he ever say anything about telling?

C: (Inaudible) and like I would probably like go to care because my mum would, my mum wouldn't be very happy or he would have to go to jail and it would break the family apart.

P: So he would say that you would have to go into care and he would have to go to jail and it would split the family apart?

C: Yeah.

P: And as a young girl what was it like, the thought of your family breaking up and you going into care?

C: It wasn't very good because I thought mum was really happy so she would be really upset.

Allegations of such subtle methods of grooming (Stolzenberg & Lyon, 2014) were typically made when the defendant lived with the child. Questioning children about grooming may help jurors understand where and how the abuse originated. The innocence of the child’s concern for her mother portrays the child as a caring individual, making her the ‘ideal victim’ (Lindholm & Cederborg, 2016).

Other relatives

When the relative was not part of the child's immediate family, it was easier for the defense to portray the children as instigators (Westcott & Page, 2002). Hence, some subtle references were made in these cases to the children's desires to appear older than they were (Reitz-Krueger et al., 2016) illuminating a 'Lolita' characteristic and their seductive power over a weak or suggestive adult.

D: So you didn't want your mum to see them or know that you were wearing thongs, is that right?

C: Aye.

D: Why not though?

C: Because I wasn't allowed to wear thongs at that age.

D: So why were you?

C: Dunno.

D: Well who said you couldn't wear them at that age?

C: My mum.

D: Your mum. But what, you decided you would, is that right?

C: Aye.

D: So you wanted them?

C: Aye.

D: So why did you want to wear a thong?

C: I dunno.

The child's admission that she knew her mother would not approve of her wearing thongs allowed the defense to introduce the theme of 'Adult Behaviors' or even 'Implicit Sexual Behaviors,' and introduce the possibility that the child anticipated interaction with the

defendant. This subtly altered the equilibrium of blame by suggesting that the child might have enough sexual knowledge to fabricate the extensive abuse that she was alleging (Bottoms et al., 2007). Lying was also suggested.

Non-relatives

Children were more readily accused of consenting to sexual interaction with non-relatives' activities, and this meant that the children's characters, as well as the events themselves, were subjected to scrutiny (Hayes & Bunting, 2013). Neglected children seeking attention were described by defense lawyers as at greater risk of coaching by other adults to make false allegations. Those who developed physically earlier than their peers seemed to be at particular risk of being deemed accountable for sexual activities.

D: Now er is it not the case er Miss G. that now at this stage in life that you were becoming increasing curious about sex? And I don't mean that as a criticism but your body's undergoing changes and you perhaps had an an interest in sex?

C: Urm no I didn't.

D: Well can I suggest to you perhaps more so than other girls of your age because you were perhaps an earlier physical developer.

C: Urm no.

In this example, the child gave evidence over a year after the alleged rape, and so may have physically developed between the incident and the trial. Nevertheless, her physical development and alleged propensity to lie were used to suggest that the child consented to sex, but then lied and said that it was non-consensual when her mother found out. The defense lawyer attempted to simultaneously draw attention to the child's intellectual

immaturity about sexual relationships and her more mature physique. The theme of explicit consent was also used to characterize individuals testifying against non-relatives.

D: Yeah because his mum was quite annoyed, wasn't she?

C: Yeah.

D: Because you had been telling people that S. R. was your boyfriend, hadn't you?

C: No.

D: Did you say to people at school that S. R. was your boyfriend?

C: No.

D: Did you say to S. R. do you want to have sex with me?

C: No.

Remarkably, the individual being questioned here was a 12-year-old female who legally could not give consent. The defense suggested that a game of dares got out of hand. This could be a comprehensible and convincing story that appeals to the average juror (Burns, 2004), and could attribute young defendants' behavior to simple misunderstanding (Weiss, 2009). In these cases, prosecutors have a dual task. They must first portray victims as reliable and confident, so they are perceived to understand sexual consent, whilst also presenting victims as naïve enough to have been influenced by defendants to engage in sexual relationships (Klettke & Mellor, 2012).

General Discussion

The present study is the first to qualitatively analyze lawyers' construction of alleged CSA narratives during witness testimony. This study investigated firstly the exploitation of common public misconceptions by lawyers, and the extent to which these differed with respect to case characteristics.

With reference to the first hypothesis, children's narratives were differentially constructed in relation to lawyer role, child age and the alleged victim- defendant relationship. Prosecution and defense lawyers relied on different themes and constructed different narratives. Consistent with our expectations and prior reports (Westcott & Page, 2002), older children and children alleging abuse against non-relatives were more likely to be accused of consenting or bearing some responsibility for their abuse, whereas younger children abused by relatives were more likely to be accused of lying about their abuse. This finding supports the work of previous literature that states that younger children are less likely to experience cross-examination that would place them as responsible for their abuse as they are unlikely to have traits or experiences that compromise their position as 'ideal victim' (Lindholm & Cederborg, 2016) such as sexual awareness or adult behaviors such as intoxication (Bottoms et al, 2007). However, older children are often perceived by jurors as more adult-like (Cossins, 2008), so allowing narratives that portray victims and defendants as having equal responsibility in the initiation and continuation of sexual encounters to become salient (Rodger et al, 2016). Further, jurors assume that the victim has more responsibility for their abuse if the defendant is also young (Reitz-Kruegr et al, 2016; Giglio et al, 2011) and given that all the non-relatives in our sample were either acquaintances or similarly aged strangers one would expect that consent would be a more salient issue.

In support of our second hypothesis, themes identified and exploited by lawyers were more likely to be associated with the characteristics or actions of the victim as opposed to those of the defendant. This finding is expected as the absence of physical evidence in the majority of these cases means that the child's testimony is the primary evidence given during trial (Jackson et al, 2015). Hence making the child appear more or less credible for prosecution and defense respectively, is of high importance in such cases, leading to more questioning of victim actions, memory and characteristics (Huang, 2016).

Consistent with our sixth hypothesis, we found that although lawyers usually structured their narratives around one central argument, they frequently referenced sub themes and narratives during their questioning. This narrative technique was found to be particularly prevalent during cross-examination. This finding is akin with instructions to lawyers in how to cross-examine witnesses by asking questions out of sequence to confuse witnesses (Brennan, 1995), which has indeed been found in transcript analysis of child sexual abuse previously (Davies & Seymour, 1998). Hence, constructing multiple narratives has the dual purpose of confusing witnesses and introducing multiple possibilities as to why the central defense narrative is true.

The final hypothesis posed suggested that older children would contribute more to the narratives, but that their contributions would only be incorporated into the prosecution narrative. This hypothesis was supported in the current study. Older children did indeed contribute more to narratives and this was expected as previous research (Wade, 2002) has found that children, particularly those over the age of 13, report that they felt that the questioning they underwent was pushing them to respond in a certain way leading to frustration and more defiance, particularly towards defense lawyers. Hence, these older children were more likely to make outbursts so as to try and control the narrative. Prosecution demonstrated that they acknowledged children's responses both by allowing children to give longer responses as a result of open-ended questions (Andrews & Lamb, 2016; Jackson et al, 2015) and then using these responses to direct further questioning. In contrast, lengthier responses during cross-examination were either dismissed by the defense or ignored. The findings thus indicate that lawyers exploit juror misconceptions about child sexual abuse during their questioning of child witnesses.

Such findings can be viewed in light of social representations theory, which states that the most credible accounts of abusive episodes are those that adhere to recognized social

representations of abuse. For example, as many potential jurors believe that false accusations of abuse by children are common (McGee et al, 2011), lawyers can use this belief to structure their argument and questioning. In addition, deviations from the ‘ideal victim’ of abuse can be used to assert that such abuse did not happen, or was consensual (Peace et al, 2015), as lawyers may be aware that jurors will have trouble ‘anchoring’ the events being described in court to socially constructed ideas of how child abuse occurs. Indeed, as the presence of such stereotypes have been found to influence mock-juror verdicts more than case facts (Goodman & Melinder, 2007) it seems logical that lawyers will exploit victim and perpetrator stereotypes for juror to anchor and understand the events in court in relation to a socially shared and accepted script (O’Connor, 2008).

Although questioning and/or challenging a witness is an essential aspect of the adversarial system, the results of this study suggest that the questioning of alleged victims of child sexual abuse use content that is problematic beyond a simple trial strategy. In this study, consent is discussed with a child who is under no circumstances able to provide consent (Sexual Offences Act, 2003), consent was further discussed with a child who was over the consent threshold at the time of trial, but not at the time the abuse occurred, suggesting that lawyers in these cases are relying on social representations of victims as opposed to the facts of the case or legislation (REF). Further, a child who was alleging abuse over twelve years previously was questioned about her own physical actions to prevent her attack. Finally, one victim had her sexual history discussed, as well as the possibility she had a ‘rape fantasy’ before being denied a break as video footage of her rape was being broadcast to the jury to provide evidence for this theory. Hence, the well-being of children in the court room and the potential for justice is being compromised as a result of lawyers’ exploitation of common myths and stereotypes associated with victims of child sexual abuse.

Indeed, despite its small sample, this qualitative examination of lawyer's narratives and exploitation of juror stereotypes about the dynamics of sexual abuse yielded numerous preliminary findings that have potential implications for practices in courts across the United Kingdom and other common law jurisdictions. There are currently few guidelines about how children should be questioned in court, and the available guidance is neither well embraced nor well informed (Spencer & Lamb, 2012). The findings of this study demonstrate that lawyers exploit common misconceptions and stereotypes to strengthen their case, and further research suggests that these beliefs are endorsed by jurors (XXXa, under review; XXXb, under review). Because believing such myths is negatively correlated with believing victims (Cromer & Goldsmith, 2010) they may affect which cases go to trial (Ernberg et al., 2016). In other words, prosecutors may choose cases based on whether or not victims will be subject to scrutiny because the situations or individual characteristics are associated with many societal myths surrounding sexual abuse, rather than the quality of alternative evidence or the severity of abuse. Thus, existing myths and stereotypes might alter the criteria used to select which cases go to trial, leaving many victims without justice or closure. The study also showed that the use of narratives may lead lawyers to cross legal and ethical boundaries, with very young individuals asked about consent and one older individual forced to watch a film of her own rape. This calls for the increased use of guidelines and toolkits (Advocates Gateway, 2015) that specify how to examine witnesses, and for judges to exercise tighter control over the behavior of lawyers in their courtrooms. The fact that the use of untrue misconceptions can heavily influence jury decisions (Cossins et al., 2009) underlines the importance of educating jurors about the dynamics of sexual abuse. The mandatory use of expert witnesses or juror briefings might reduce the impact of stereotypes and lawyers' appeals to them (Cossins et al., 2009). In addition, the use of trained intermediaries might prevent children from having to answer inappropriate questions and ensure that children understand the questions put to them.

Limitations

All defendants were male so the study is arguably androcentric, only describing the stereotypes lawyers employ when men offend. However, only 5% of perpetrators of CSA are female (Bunting, 2005) and none were charged in the period sampled. Secondly, one could argue that 5- to 12-year-olds are too different developmentally to comprise a single meaningful age group. Unfortunately, however, the sample included too few children of young ages to permit the creation of discrete age groups. Additionally, the children in this large category have the same legal status and so should be the target of the same variety of narratives and themes.

Future Research

Future research will benefit from examining whether particular types of misconceptions are more accepted than others (McGee et al., 2011), and whether the employment of specific narratives are systematically associated with guilty or not-guilty verdicts (Cromer & Goldsmith, 2010). A media analysis of reports of CSA allegations (both fictitious and true) might reveal which stereotypes are rife in popular culture, influencing the public rhetoric (Bowman, 2016). One could also view the children's cross-examinations in light of the opening and closing speeches to assess the extent to which lawyers use the narratives employed when eliciting children's testimony. Finally, because the age of consent differs between legal systems, the robustness of the increasing reliance on victim-blaming sub-narratives could fruitfully be explored cross-culturally.

Conclusion

At the personal level, narratives involve expressions of the narrators' lived experiences, whereas at the societal level they involve socially shared stories that are characteristic of certain communities (Flick, 2014). Because children are not given the opportunity to construct their own narratives in court, lawyers can guide them to help create

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reports that will convince jurors. By using socially constructed stereotypes and stories to structure their narratives, lawyers disrupt the children's personal narratives, and compromise their lived experiences for the benefit of their respective clients. Whilst the right to cross-examine witnesses is a fundamental aspect of adversarial legal systems, issues of relevance and humiliation become salient when lawyers exploit jurors' common misconceptions to construct their narratives in order to affect perceptions of credibility. Jurors need to be made aware of the myths and stereotypes that may influence their decision-making and consequently disrupt the pursuit of justice.

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Table 1.

Number of Cases for each Age x Relationship Category

Relationship Category	5-12	13-15	16-17	Total
Father and Step-Father	9	6	0	15
Other Relatives	3	19	8	30
Non-Relatives	3	10	8	21
Total	15	35	16	66

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Table 2.

Codes Generated for Thematic Analysis

Theme	Definition	Example
Prosecution		
Knowledge (Biological/Sexual)	Any knowledge of intimate relationships or sexual acts more advanced than would be expected of a child of that age.	<p>“And where did you learn about blow jobs?”</p> <p>“So when you had your hand on his willy, milk came out of his willy, is that right?”</p>
Manipulation (Cyber)	Any contact between defendant and victim online or by phone that is considered abusive or a means of initiating sexual experiences.	<p>“And what did he ask you to do when you were on Skype?”</p> <p>“How did you know? What was is about it that was porn?”</p>
Manipulation (Verbal)	Any verbal utterance by the defendant that was designed to coerce or intimidate the victim.	<p>“Did he make any noise?”</p> <p>“And do you remember the way he would make you do it? What he would say?”</p>
Manipulation (Physical)	Any mention of bodily harm inflicted onto the victim by the defendant.	<p>“And when he hit you, would it be on your bare bottom?”</p> <p>“When you say ‘he hit us’, what do you mean?”</p>
Manipulation (Financial/ Material)	Any material or financial benefit given to the victim by the defendant to keep them quiet or to reward them for performing sexual acts.	<p>“And each time it happened, where did you put the money?”</p> <p>“So during that time he kept providing you drinks?”</p>

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Fear	Asking the child if they were afraid, and if so, what they were afraid of.	“Why were you scared to tell anyone?”
School	Discussing with the child the repercussions of what has happened to them in terms of academic or social achievement.	“Okay and you were sometimes scared?” “And you struggle a lot with making friends at school now, don’t you?” “And in what way were you getting on bad at school?”
Pre-empting the Defense	Any active effort by the lawyer to dispute the line of questioning that might occur in the impending defense case before it occurs.	“And even though you were in a relationship, you did not consent on this occasion?” “And have you come to the court and told me the truth about what he did to you?”
Innocence	Anything that reinforces the victim’s physical or emotional childishness, discussion of interests etc.	“You were a very young girl” “Now as a girl at that age did you know what was going on?”
Defense		
Attraction	Anything that suggests the victim was physically or sexually attracted to the perpetrator.	“So you didn’t shout ‘Hey Sexy!’ to him when you saw him out?” “Was there a point in time where you began to fancy C.R?”
Affection	Anything suggests that the victim had an emotional connection to the perpetrator.	“And you would tell him you loved him?” “And would you still play with him if you could?”
Family Relations	Perpetrator has a good relationship with the family of the victim.	“So your parents were okay with you meeting him on your own?” “Mr D was somebody who did jobs for your mum around the house, is that right?”

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Jealousy/Revenge	A change in the relationship between victim and perpetrator, which could cause negative feelings or an incentive to retaliate.	<p>“But you didn’t tell anyone anything until you found out he was going out with someone else?”</p> <p>“He was cheating on you? How did you find out?”</p>
Hatred	Any explicit declaration of profound dislike for the perpetrator.	<p>“And you don’t want to see him again, is that right?”</p> <p>“And why wouldn’t you want to speak to him at all?”</p>
Physical Strength	Discussion of the perpetrator’s physical size or physique in relation to the victim.	<p>“And he’s quite a lot bigger than you, is that right?”</p> <p>“And he could have held you down if he wanted to, right?”</p>
Physical Weakness	Discussion of the defendant’s lack of physical capabilities	<p>“And granddad had quite a bad limp, is that right?”</p> <p>“You remember that he was very, very, skinny?”</p>
Neuro-Atypicality	A mental health or learning difficulty possessed by the defendant which is used to suggest that they are an ‘easy target’ to accuse.	<p>“He didn’t really behave like the older boys, right? He much preferred playing with people your age?”</p> <p>“Because you know he’s got something called autism, don’t you?”</p>
Circumstances	Any recent change in the socioeconomic or family situation of the defendant used to create sympathy for untoward behaviors.	<p>“And was your daddy quite sad after mummy died?”</p> <p>“And did you know that he was in the army before?”</p>
Personality	If the perpetrator had a good character reference.	<p>“He would play lots of fun games with you, right?”</p> <p>“So you felt like he was the only one who understood you?”</p>

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Caregiver Role/Influence	Previous interactions with the child were positive and consistent with the relationship.	“So sometimes it would be R and his wife who would take you to the park, is that right?”
Adult Behaviors	Any characteristics of the victim’s behavior focused on by a lawyer that is subsequently used to suggest that they act older than their chronological age.	<p>“Were you happy to stay in the house with Grandad D alone?”</p> <p>“So when you went out, would you usually drink quite a lot of alcohol?”</p> <p>“And had you had boyfriends before that?”</p>
Consent (Explicit)	Any action taken by the victim that is used by the lawyer to suggest that the intercourse that took place was consensual from the perspective of the perpetrator.	<p>“Were there times when it was sort of consensual?”</p> <p>“And you’re both doing this and moving about under the covers but you’re both doing it consensually if you know what I mean by that?”</p>
Consent (Implicit)	Any actions taken by the victim that would suggest s/he had consented, without explicit mention of the word.	<p>“You went round to his house frequently after the first incident though?”</p> <p>“I’m just trying to understand why you would go back and play with S.R after the first time that these things happened.”</p>
Implicit Sexual Behavior	Any behaviors typical of sexual relationships excluding penetrative or oral sex.	<p>“And when you were on the beach did you see K kissing the taller of the two men?”</p> <p>“Right and you were suggesting that you would kiss C.R that day as well?”</p>
Attention/Sympathy	Behaviors suggesting that the child made up the allegation to have an elevated social status, or because of a dispute between the defendant and the child.	<p>“You wanted everyone to know that you had slept with him to give you status among your peers. Is that right?”</p> <p>“Would you agree with the suggestion that you wanted the kudos, the respect, that you wanted to appear more adult, and more sophisticated?”</p>

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Coercion	Any mention of the possibility that a third party told the child to make the accusation, or that the child discussed their disclosure with many other individuals prior to the police.	<p>"I think you are only telling us because your mum fell out with your granddad about money?"</p> <p>"And do you feel that you've been influenced in any way by talking about these things to other people?"</p>
Forensic Naivety/Awareness	Actions of the victim that remove any forensic evidence that would support their testimony that abuse occurred.	<p>"Why did you shower straight away afterwards?"</p> <p>"Do you know that by allowing potentially vital forensic evidence to be washed away that you've perhaps compromised the investigation of this complaint?"</p>
Secrecy	The child keeps their social life secret from their parents/ is not entirely truthful about the frequency/intensity of encounters with the defendant.	<p>"And your mum would have been cross if she found out you had sex?"</p> <p>"You never told anyone about this, your mum came to you, didn't she?"</p>
Delayed Disclosure (Family)	Disclosure does not take place immediately after the abuse.	<p>"Why did it take you so long to tell your mum?"</p> <p>"You could have told your dad I suppose cos he was a policeman?"</p>
Delayed Disclosure (Police)	The child has difficulty giving a statement to the police	<p>"Why did it take two hours for your mum to phone the police after you told her?"</p> <p>"Why, when you got involved with the police and the social work, why did you not tell them what had happened straight away?"</p>
Immaturity	Making the child appear foolish for perceiving the relationship as healthy.	<p>"And you didn't think it odd that people asked about the age difference?"</p> <p>"Because you had been telling people that he was your boyfriend, hadn't you?"</p>

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Retraction	Discussion of the fact that the child was reluctant to press charges, or changed his/her mind about the identity of the perpetrator.	“When you first told the teacher you said it was a stranger” “Now did you tell them at that point that you wish to retract or withdraw your previous statement?”
Disobedience	If the child behaves adversely to staff trying to assist (e.g., social worker, police officer).	“Why were you lashing out at the medical staff?” “Why didn’t you want to be examined?”
Lies	Accusing the victim of not telling the truth.	“I suggest to you that he never touched you.” “You are someone who tells lies though, aren’t you?”
Memory	The victim is accused of not remembering something because it didn’t happen.	“Loosing your virginity is a big part of someone’s life- you’re not likely to forget it are you?” “If you’re telling the truth, why have you got so many of the surrounding details wrong?”
Dreaming	Asking the child if s/he dreamt that the abuse took place.	“Are you sure you didn’t just dream that this happened?” “And it definitely wasn’t a dream?”
Both		
Alert/Preventative Measures	Any action taken by the victim (or lack thereof) to prevent the occurrence of abuse.	“Why didn’t you scream- the walls were paper thin?” “You remember crying and you remember telling him to stop?”
Aggression	Reacting to a child’s sudden outburst	“You don’t need to shout” “I suppose that if I stand here pointing out other areas that may cause you difficulties you may just keep shouting at me and hiding behind excuses, is that right?”

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Upset/Demeanor	Being responsive to a child who asks for a break or is showing signs of distress.	<p>“Are you alright?”</p> <p>“Are you okay for me to keep asking questions?”</p>
Mental Health	Discussion of any clinical diagnosis the child has received as a result of the abuse.	<p>“Can you tell me more about your diagnosis of PTSD?”</p> <p>“Where were you going to see the psychologist?”</p>

Table 3.

Rationale for Choosing Cases for Narrative Analysis

Child Age Category	Relationship Category	Reasons for Choosing Case
5-12	Father/Step-Father	This case displayed many references to the victim’s innocence as well as fear, both of which are typical of cases of this nature. There is also a distinct absence of any consent references but presence of delayed disclosure. In addition to being a typical case thematically, this case is also an endurance of abuse; is also typical of abuse from fathers and stepfathers in this sample. This lengthy account and variety of abuse forms gives prime opportunity to demonstrate an array of techniques possible for lawyers to use.

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5-12	Other Relative	This case is typical for both categories as there is heavy reference to the child's delay in disclosure and an attempt to ignore the amount of influence the perpetrator may have on the victim's actions. The case also included an incident in which the defense lawyer is reprimanded by a judge for their questioning technique being unsuitable, it would be interesting to see the extent to which this interrupts the narrative the lawyer is trying to impinge.
5-12	Non-Relative	Based on the thematic analysis these two categories (5-12 and non-relative) combined present opposites. There are references to innocence and sexual knowledge, as one would expect, teamed with lengthy reference to characteristics of the perpetrator and consent categories (including explicit consent, which is not warranted legally by this age category). There is a delay in disclosure and immaturity to contrast the innocence referred to by the prosecution. Cases in which an individual this young has been victim to a non-relative are somewhat rare, and the dissonance with which this case is argued will provide insight into the subtle ways in which themes may be used by lawyers when a case is against convention.
13-15	Father/Step-Father	In this case there are a variety of abuse techniques. This case is interesting as there are two additional witnesses to the abuse that the defense lawyer must dispute whilst simultaneously discrediting the child as a reliable witness. As typical for older victims there is an increase in the number of themes used in comparison to those in the 5-12 age category including an increased discussion of preventative tactics and characteristics of the victim. This case, in conjunction with the above, gives an optimal means for discussion about abuse conducted by fathers and stepfathers.
13-15	Other Relative	This case was interesting as it demonstrated a somewhat advanced account of abuse that far exceeded anything inflicted on the other victims in this sample. Discussion of adult behaviors and implicit consent are consistent with a subtle trend towards victim blaming with increased age. Given the uniqueness and advanced nature of the sexual acts endured by the victim, it is possible to explore some of the more extreme techniques the defense might use to dispute the victim's testimony whilst remaining under the restriction of this legal age category.

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13-15	Non-Relative	This case features a heavy discussion of the victim's characteristics as well as the victim's feelings towards the perpetrator. This is combined with multiple and varied accounts of manipulation and hence the defense has attempted to dispute each one with minimal reference to the victim. This case is also one of the only ones to feature active myth disputing by the prosecution. This case has many parallels with that of older victims and so may be useful for exploring themes that could possibly be relevant for rape cases in adults.
16-17	Other Relative	The victim reports on an incident of abuse by her grandfather that took place 10 years previously. The victim frequently does not mention details of the incident due to lack of memory. This does however, give ample opportunity for lawyers to generate their own narratives based on the minimal facts available, hence making it an optimal case to study. There is heavy reference on the delayed disclosure of the victim, as well as a few mentions of alert and preventative tactics as well as other themes that the thematic analysis deems typical of this age category.
16-17	Non-Relative	The victim was in a relationship with the perpetrator, who is an older male. The case involves a complex build up to the abuse, which occurs over the cyber, physical, and verbal domain; the first of which there is evidence of. The defense argues that this relationship was harassment from the victim's side. Additionally, this case is the only one to feature all of the consent categories, as well as dismissing the majority of possible discussion about the perpetrator. Indeed, this case ranked the highest in terms of the number of themes coded in the preliminary analysis and so one would argue that it would be the optimal case to show how all these themes might be constructed holistically in a single narrative.
13-15	Non-Relative	This case is interesting as it presents one of the only cases of this age and relationship category that does not feature alcohol as a confounding factor when the abuse occurred. This means that the defense cannot resort to more 'common' tactics for this case, and cannot argue that the victim may not remember events due to alcohol, or may be an individual who is prone to displaying adult behaviors. In addition, there is also reference to forensic naivety, which has so far been neglected by the sample chosen for the narrative. For this age category it may be important in structuring a narrative of blaming a victim, as they would have compromised their case by acting in a way that reduces their evidence.

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13-15 Non-Relative This case is the most fruitful in terms of prosecution codes yet neglects entirely to discuss the perpetrator in the defense case, aside from the victims physical and emotional connection with him. Interestingly there is an absence of explicit consent, but the victims' naivety in terms of the DNA evidence to corroborate the crime, and references towards immaturity in relationship is analyzed, in line with a more subtle approach between the (mostly) absence of victim-blaming categories in the 5-12 categories to a large emphasis on it in trials involving 16 and 17 year olds.

Table 4.

Results of Thematic Analysis

Theme	Relationship Type x Age Category - Presence (%)							
	Father/Step-Father		Other Relatives			Non-Relatives		
	5-12 (n = 9)	13-15 (n = 6)	5-12 (n= 3)	13-15 (n = 19)	16-17 (n= 8)	5-12 (n = 3)	13-15 (n = 10)	16-17 (n = 8)
Knowledge (Biological/Sexual)	66.7	50.0	33.3	42.1	12.5	66.7	20.0	37.5
Manipulation (Cyber)	22.2	33.3	00.0	26.3	12.5	00.0	70.0	62.5
Manipulation (Verbal)	44.4	66.7	33.3	36.8	37.5	66.7	70.0	37.5
Manipulation (Physical)	77.8	100.0	66.7	73.7	62.5	66.7	80.0	87.5

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Manipulation (Financial/Material)	22.2	00.0	66.7	21.1	37.5	00.0	20.0	12.5
Fear	66.7	50.0	66.7	57.9	25.0	33.3	60.0	87.5
School	11.1	00.0	00.0	15.8	00.0	00.0	30.0	37.5
Pre-Empting Defense	00.0	00.0	00.0	78.9	87.5	33.3	40.0	87.5
Innocence	77.8	50.0	100.0	42.1	50.0	100.0	80.0	50.0
Attraction	00.0	00.0	00.0	05.3	00.0	00.0	70.0	75.0
Affection	55.6	33.3	33.3	36.8	50.0	00.0	60.0	50.0
Family	11.1	16.7	33.3	26.3	50.0	33.3	10.0	12.5
Jealousy/Revenge	11.1	16.7	00.0	21.1	12.5	00.0	30.0	25.0
Hatred	11.1	00.0	00.0	21.1	25.0	33.3	10.0	00.0
Physical Strengths	00.0	00.0	00.0	15.8	25.0	00.0	10.0	00.0
Physical Weaknesses	00.0	16.7	00.0	05.3	25.0	00.0	10.0	12.5
Neuro-Atypicality	11.1	00.0	00.0	10.6	00.0	66.7	00.0	12.5
Circumstances	33.3	00.0	00.0	00.0	00.0	00.0	00.0	12.5
Personality	11.1	33.3	33.3	36.8	12.5	33.3	30.0	25.0
Influence	44.4	33.3	00.0	42.1	50.0	00.0	20.0	25.0
Adult Behaviors	11.1	00.0	33.3	15.8	50.0	00.0	90.0	62.5
Consent (Explicit)	00.0	16.7	00.0	05.3	00.0	33.3	60.0	50.0
Consent (Implicit)	00.0	00.0	33.3	21.1	25.0	66.7	50.0	75.0
Implicit Sexual Behavior	00.0	16.7	00.0	10.6	00.0	66.7	70.0	62.5
Attention/Sympathy	33.3	16.7	00.0	21.1	25.0	00.0	70.0	62.5

ABUSE NARRATIVES IN SCOTTISH COURTS

Coercion	11.1	33.3	100.0	36.8	25.0	00.0	20.0	12.5
Forensic Naivety	11.1	33.3	00.0	21.1	12.5	00.0	40.0	12.5
Secrecy	33.3	50.0	00.0	42.1	37.5	00.0	60.0	62.5
Delayed Disclosure (Family)	22.2	33.3	66.7	63.2	75.0	66.7	70.0	50.0
Delayed Disclosure (Police)	11.1	50.0	00.0	52.6	75.0	33.3	50.0	50.0
Immaturity	33.3	00.0	00.0	21.1	37.5	66.7	80.0	87.5
Retraction	22.2	16.7	00.0	05.3	25.0	33.3	10.0	25.0
Hostility	00.0	00.0	00.0	00.0	12.5	00.0	10.0	25.0
Lies	88.9	100.0	100.0	94.7	87.5	100.0	70.0	100.0
Memory	33.3	16.7	00.0	47.4	50.0	66.7	70.0	50.0
Dreaming	00.0	16.7	00.0	05.3	00.0	00.0	00.0	00.0
Aggression (Prosecution)	00.0	00.0	00.0	00.0	0.00	00.0	10.0	0.00
Upset/Demeanor (Prosecution)	22.2	00.0	33.3	15.8	25.0	33.3	50.0	37.5
Alert/Preventative Tactics (Prosecution)	33.3	33.3	33.3	42.1	25.0	33.3	60.0	75.0
Mental Health (Prosecution)	00.0	0.00	00.0	10.6	00.0	00.0	20.0	12.5
Aggression (Defense)	00.0	00.0	00.0	00.0	0.00	00.0	50.0	25.0
Upset/Demeanor (Defense)	11.1	00.0	00.0	05.3	25.0	66.7	20.0	12.5
Alert/Preventative Tactics (Defense)	0.00	16.7	0.00	26.3	50.0	33.3	60.0	62.5
Mental Health (Defense)	00.0	00.0	00.0	0.00	00.0	00.0	10.0	25.0